



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 10, 2014

Ms. Shellie Hoffman Crow
Counsel for the Seminole Independent School District
Walsh, Anderson, Gallegos, Green and Treviño, P.C.
P.O. Box 2156
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OR2014-09939

Dear Ms. Crow:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 525453.

The Seminole Independent School District (the "district"), which you represent, received a request for the names and current job titles and employers of individuals who have applied for or been contacted by the district in regards to a specified coaching position. You claim the requested information is not subject to the Act.¹ You further state release of this information may implicate the proprietary interests of Champions Search Firm ("Champions"). Accordingly, you state, and provide documentation demonstrating, the district notified Champions of the request and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered your arguments.

First, you contend the requested information is not subject to the Act because the district does not possess or maintain the requested informaton. The Act is applicable to "public

¹Although you raise section 552.101 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the requested information. *See* Gov't Code §§ 552.301, .302.

information.” See Gov’t Code § 552.021. Section 552.002(a) defines “public information” as:

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). Thus, virtually all information in a governmental body’s physical possession constitutes public information subject to the Act. *Id.* § 552.002(a)(1); see also Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information a governmental body does not physically possess. Information that is written, produced, collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns, has a right of access, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. Gov’t Code § 552.002(a); see Open Records Decision No. 462 at 4 (1987); cf. Open Records Decision No. 499 (1988). Additionally, information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by a person or entity performing official business or a government function on behalf of a governmental body and the information pertains to official business of the governmental body. See Gov’t Code § 552.002(a-1).

The requested information consists of the names and current job titles and employers of applicants for employment in a particular position with the district. You state the requested records “are not maintained by or for the [d]istrict, and the [d]istrict does not own or have a right of access to such information.” You state the information at issue is maintained by Champions, a private consulting firm contracted by the district to fill certain job vacancies. However, you have provided a copy of the consulting agreement between the district and Champions. We note the district agreed to pay Champions a consulting fee and reimbursement expenses pursuant to this agreement. Further we note Champions is

obligated to receive, screen, and respond to applications submitted to the district, and conduct a formal search and selection process to fill the vacant position within the district. Thus, we find public money was spent for the purpose of writing, producing, collecting, assembling, or maintaining the information at issue. *See id.* § 552.002(a)(2)(C). We further find Champions is acting on behalf of the district as its agent. Thus, we find the information at issue was created and is maintained by Champions on behalf of the district and the district owns or has a right of access to this information. *Id.* § 552.002(a), (a-1). Furthermore, the information pertains to the transaction of official district business. Accordingly, the information at issue constitutes “public information” as defined by section 552.002(a) and is subject to the Act.

Next, we understand you to claim the requested information is made confidential by the consulting agreement. However, information is not confidential under the Act simply because a party submitting the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [[the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to Gov’t Code § 552.110). Consequently, unless the requested information comes within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

We must now address the district’s obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to subsection 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov’t Code § 552.301(e). The district received the request for information on March 19, 2014. However, as of the date of this letter, you have not submitted a copy of the specific information requested or a representative sample for our review. Consequently, we find the district failed to comply with the requirements of section 552.301.

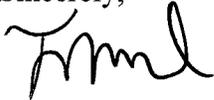
Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342,350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-81 (Tex. App.—Austin 1990,

no writ); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although you assert third-party interests are at stake, as of the date of this letter, we have not received any arguments from Champions explaining how release of the requested information would affect its proprietary interests. See Gov't Code § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm). Accordingly, the requested information must be released to the requestor pursuant to section 552.302 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 525453

Enc. Submitted documents

c: Requestor

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